

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT CHARLES LAVERY,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION,

Respondent.

No. 1:20-cv-00948-NONE-JLT (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING THE CLERK OF
COURT TO ASSIGN DISTRICT JUDGE FOR
PURPOSE OF CLOSING CASE AND THEN
CLOSE CASE, AND DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

(Doc. No. 5)

Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He alleges that he is receiving inadequate medical care because his transfer from the Kings County Jail to state prison has been put on hold due to COVID-19 and that “law enforcement over-charg[ed]” his case and “stack[ed]” crimes in order to secure a conviction. (See Doc. No. 1.) On July 10, 2020, the magistrate judge assigned to the case issued findings and recommendations recommending that the petition be dismissed on the basis that petitioner failed to name a proper respondent; has not exhausted his claims by first presenting them to the highest state court; and failed to state a cognizable claim for federal habeas relief. (Doc. No. 5.) The pending findings and recommendations additionally cited the *Younger*

1 abstention doctrine (*Younger v. Harris*, 401 U.S. 37, 43-54 (1971)) as another basis to withhold
2 review of the pending petition, finding some ambiguity as to whether petitioner had been
3 convicted of a crime at the time the magistrate judge received the petition, based on the dates
4 provided by petitioner therein. The findings and recommendations were served upon all parties
5 and contained notice that any objections were to be filed within thirty days from the date of
6 service of that order. To date, no party has filed objections.

7 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a
8 de novo review of the case. Having carefully reviewed the entire file, the court concludes that the
9 magistrate judge's findings and recommendations are supported by the record and proper
10 analysis.

11 In addition, the court declines to issue a certificate of appealability. A state prisoner
12 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of
13 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537
14 U.S. 322, 335-336 (2003). If a court denies a petitioner's petition, the court may only issue a
15 certificate of appealability when a petitioner makes a substantial showing of the denial of a
16 constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must
17 establish that "reasonable jurists could debate whether (or, for that matter, agree that) the petition
18 should have been resolved in a different manner or that the issues presented were 'adequate to
19 deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)
20 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

21 In the present case, the court finds that petitioner has not made the required substantial
22 showing of the denial of a constitutional right to justify the issuance of a certificate of
23 appealability. Reasonable jurists would not find the court's determination that petitioner is not
24 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
25 proceed further. Thus, the court therefore declines to issue a certificate of appealability.

26 Accordingly, the court orders as follows:

27 1. The Findings and Recommendations, filed July 10, 2020 (Doc. No. 5), are
28 adopted;

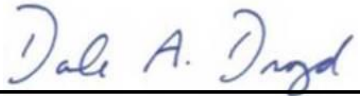
1 2. The petition for writ of habeas corpus is dismissed;

2 3. The Clerk of Court is directed to assign a district judge to this case for the purpose
3 of closing the case and then to close the case; and,

4 4. The court declines to issue a certificate of appealability.

5 IT IS SO ORDERED.

6 Dated: September 2, 2020

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9 UNITED STATES DISTRICT JUDGE
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